

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STATE OF NEBRASKA,)	8:09CV48
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
MICHAEL E. HARRIS,)	
)	
Defendant.)	

This matter is before the court on the defendant's Motion to Proceed In Forma Pauperis. (Filing No. 2.) The defendant filed a Notice of Removal on January 30, 2009, pursuant to 28 U.S.C. § 1443 and 28 U.S.C. § 1446. (Filing No. 1.)

In accordance with 28 U.S.C. § 1446(c)(4), the court has carefully reviewed the Notice of Removal and finds that "it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted." *Id.* The defendant's conviction in the Nebraska state court is final, and there is no "pending prosecution" which may be removed.¹ If the defendant wishes to challenge his state-court conviction in this court, he must file a petition for writ of habeas corpus.

IT IS THEREFORE ORDERED that:

¹The court also notes that the Notice of Removal is untimely. 28 U.S.C. § 1446(c)(1) requires that a notice of removal of a criminal prosecution be filed no "later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier." *Id.* The defendant was convicted at some point prior to September 28, 2006, when he filed his motion for new trial in the state court. Thus, the Notice of Removal was filed at least four years too late.

1. Defendant Michael E. Harris' Notice of Removal is summarily remanded to the Nebraska Supreme Court in accordance with [28 U.S.C. § 1446\(c\)\(4\)](#). The clerk of the court is directed to send a copy of this memorandum and order to the Clerk of the Nebraska Supreme Court.

2. the defendant's Motion to Proceed In Forma Pauperis (filing no. [2](#)) is denied as moot.

3. the clerk of the court is directed to send to the defendant the forms AO240, Application to Proceed Without Prepayment of Fees and Affidavit, and AO241, Petition for Relief From a Conviction or Sentence.

4. a separate judgment will be entered in accordance with this memorandum and order.

Dated March 24, 2009.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge